



#18

PTO/SB/64 (05-03)

Approved for use through 04/30/2003. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

| | |
|---|---|
| CONTINGENT PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137 (b) | Docket Number (Optional) 407J-000700US |
|---|---|

First named inventor: Lisle W. George

Application No.: 09/884,696

Art Unit: 1645

Filed: June 19, 2001

Examiner: Virginia Allen Portner

Title: MORAXELLA BOVIS CYTOTOXIN, CYTOXIN GENE, ANTIBODIES AND VACCINES FOR PREVENTION AND TREATMENT OF MORAXELLA BOVIS INFECTIONS

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 308-6916

RECEIVED

APR 02 2004

TECH CENTER 1600/2900

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extension of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee – required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

 Small entity fee \$ 665 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27. Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in

the form of a Response to Notice of Non-Compliant Amendment and Supplemental Response to Office Action dated November 15, 2002 with Amendment is enclosed herewith.

B. The issue fee of \$ _____

- has been paid previously on _____
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

665.00 DA

0: FC:2453

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

3-25-04

Date

E.J. DesJardins

Signature

Telephone Number: (510) 769-3502

Edward J. DesJardins

Typed or printed name

Quine Intellectual Property Law Group, P.C.

Address

P.O. Box 458, Alameda, CA 94501

Address

Enclosures: Fee Payment Reply Terminal Disclaimer Form Additional sheets containing statements establishing unintentional delay Other: Petition to Withdraw the Holding of Abandonment, Affidavits of Hana Verny and John Angelos

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

3-25-04

Date

Tracie Brooks

Signature

Tracie Brooks

Type or printed name of person signing certificate



I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to:
Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on
3-25-04
QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By: Tracie Brooks

Atty Docket No: 407J-000700US

Client Ref: 1999-069-1

RECEIVED

APR 01 2004

OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Lisle W. George, et al.

Application No.: 09/884,696

Filed: June 19, 2001

For: **MORAXELLA BOVIS CYTOTOXIN,
CYTOXIN GENE, ANTIBODIES AND
VACCINES FOR PREVENTION AND
TREATMENT OF MORAXELLA BOVIS
INFECTIONS**

Examiner: Virginia Allen Portner

Art Unit: 1645

**PETITION TO WITHDRAW
HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE
OFFICE ACTION**

RECEIVED

APR 02 2004

TECH CENTER 1600/2900

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This petition is filed in response to a Notice of Abandonment dated December 12, 2003 for the above-referenced application. The Notice of Abandonment indicated that the application was abandoned because, "No reply has been received." No further information was provided in the Notice of Abandonment. The Applicants initiated a phone conference with Examiner Portner on January 6, 2004 to ascertain the reason for the Notice of Abandonment. In this phone conference, the Examiner informed the Applicants that the application was deemed abandoned for failure to respond to a Notice of Non-Compliant Amendment dated in the USPTO on April 22, 2003, which had a 6-month statutory period for reply (*i.e.*, reply required on or before October 22, 2003). The Examiner faxed a copy of the Notice of Non-Compliant Amendment to the Applicants on January 12, 2004.

Applicants have reviewed the file jacket and docket records for evidence that a Notice of Non-Compliant Amendment was received. However, the search did not reveal any evidence of

receipt of the Action. In accordance with MPEP 711.03(c) II, Applicants have attached herewith an Affidavit from previous Attorney of Record Hana Verney attesting that she searched her docket record for the period in question and is unable to find any documentation that would indicate a Notice of Non-Compliant Amendment was ever received in this case.

In view of this, Applicants respectfully petition for withdrawal of the Notice of Abandonment on the grounds that the USPTO Notice of Non-Compliant Amendment was never received. Accordingly, Applicants submit that the present application should be reinstated. Following reinstatement of the application, Applicants respectfully request entry of the enclosed Response to Notice of Non-Compliant Amendment and Supplemental Response to Office Action Dated November 15, 2002 with Amendment.

If the Commissioner believes that a telephone conference would expedite this Petition and the expeditious prosecution of this case, he is encouraged to telephone the undersigned at (510) 337-7871.

In the event that this Petition to Withdraw the Holding of Abandonment is not granted, Applicants have included herewith and request entry of a Contingent Petition for Revival of an Application for Patent Abandoned Unintentionally.

QUINE INTELLECTUAL PROPERTY
LAW GROUP, P.C.
P.O. BOX 458
Alameda, CA 94501
Tel: 510 337-7871
Fax: 510 337-7877

Respectfully submitted,



Edward DesJardins
Reg. No: 51,162

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,
3-25-04

SURENNE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By Tracie Banks

RECEIVED

APR 01 2004

OFFICE OF PETITIONS

**AFFIDAVIT OF HANA VERNY
UNDER 37 CFR § 1.132**

| | | | |
|-----------|---|-------------------------|-----------------------|
| Appl. No. | : | 09/884,696 | Confirmation No. 4037 |
| Applicant | : | Lisle W. George, et al. | |
| Filed | : | June 19, 2001 | |
| TC/A.U. | : | 1645 | |
| Examiner | : | Virginia Allen Portner | |

| | | |
|------------------|---|---------------|
| Atty. Docket No. | : | 407J-000700US |
| Customer No. | : | 22798 |
| Client Ref No. | : | 1999-069-1 |

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Hana Verny, of Peters, Verny, Jones & Schmitt, LLP, was formerly the Attorney of Record in the case cited above. While this case was in my care, I do not recall receiving a Notice of Non-Compliant Amendment dated April 22, 2003, allegedly mailed by the USPTO to my address. Furthermore, I am unable to find any documented indication to suggest that any such USPTO correspondence was ever received by me.

My search for evidence that such a correspondence was received included a search of paper and electronic copies of my docket record and paper and electronic copies of client correspondences for that time period. These searches did not yield any evidence that a Notice of Non-Compliant Amendment dated April 22, 2003 was ever received.

RECEIVED

APR 02 2004

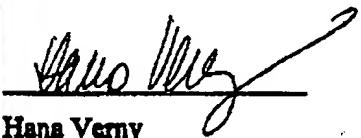
TECH CENTER 1600/2900

Affidavit of Hana Verny

Page 2

It is my standard practice to forward to the client (in this case the University of California Office of Technology Transfer) copies of all USPTO correspondences after receiving the correspondence, and keep a record of that client correspondence. I have searched for and did not find any evidence that I sent a correspondence regarding a Notice of Non-Compliant Amendment to the University of California during this time period involving this case.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.


Hana Verny

February 16, 2004

Attorney at Law
Peters, Verny, Jones & Schmitt, LLP
385 Sherman Avenue, Suite 6
Palo Alto, CA 94306